

RECEIVED

DEC 30 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

In the Matter of

)
)
)
)
)
)
Amendment of the Commission's
Rules To Establish New Personal
Communications Services

GEN Docket No. 90-314

COMMENTS

Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5214

December 30, 1993

Attorney for GTE Service Corporation

No. of Copies rec'd
List ABCDE

044

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	iv
I. THE RECORD SUPPORTS ELIMINATING UNNECESSARY AND UNJUSTIFIED CONSTRAINTS ON CELLULAR PARTICIPATION IN PCS.....	2
A. The Petitions Overwhelmingly Demonstrate that the Eligibility Rule Is Unnecessarily Restrictive and Bars Publicly Beneficial Cellular Participation in PCS	2
B. MCI's Request for Its Own Self-Serving Spectrum Set Aside Should Be Summarily Rejected	4
C. The Commission Should Clarify That Compliance With Eligibility Limitations Must Occur Prior to Initiation of PCS Service and That Tax Certificates Will Be Issued For Any Necessary Divestitures of Cellular Interests	8
II. THE COMMISSION SHOULD ALLOW PCS LICENSEES TO SUBDIVIDE SPECTRUM ON A GEOGRAPHIC AND BANDWIDTH BASIS	9
III. THE COMMISSION SHOULD ALLOW INCREASED POWER FOR PCS BASE STATIONS	11
IV. THE COMMISSION SHOULD NOT ATTEMPT TO DEFINE PCS EQUIPMENT REQUIREMENTS, BUT RATHER SHOULD RELY UPON INDUSTRY STANDARDS BODIES.....	12
V. ANY CLARIFICATION OF THE UNLICENSED PCS RULES SHOULD ENSURE THAT CELLULAR CARRIERS AND THEIR AFFILIATES ARE FREE TO PARTICIPATE FULLY IN THE OFFERING OF SYSTEMS AND DEVICES CONSISTENT WITH THE SPECTRUM ETIQUETTE AND OTHER PART 15 REQUIREMENTS.....	13

VI.	THE COMMISSION SHOULD IDENTIFY PCS SERVICE AREAS BASED ON THE COUNTIES WITHIN EACH BTA AND MTA, INSTEAD OF USING THE PROPRIETARY RAND MCNALLY DEFINITIONS AND MAPS	13
VII.	CONCLUSION	15

SUMMARY

An extraordinarily large number of petitioners have urged the Commission to remove unwarranted and unjustified restrictions on the participation of experienced and highly qualified cellular carriers in the PCS marketplace. Twenty-five parties have shown that the current, arbitrary attribution and service area overlap standards of the PCS Second Report and Order unnecessarily preclude cellular participation where there is no risk of anticompetitive conduct. Absent changes, such as the 20 percent effective POP standard advocated by GTE, the eligibility rules will erect artificial entry barriers falling with particularly uneven weight upon independent telephone companies.

MCI, as the second largest interexchange carrier and organizer of a national bidding consortium of several hundred parties, seeks to impose additional disabilities on cellular carriers. Specifically, MCI wants to bar the nine largest cellular carriers from even bidding for one 30 MHz special spectrum block. This set-aside for MCI and its fellow travelers has no basis in law or public policy. Instead, MCI's request for its own particularized designated entity status must be summarily rejected as self-serving and anticompetitive.

As detailed in GTE's Petition, the Commission should clarify that cellular carriers may bid for any PCS license, subject to coming into compliance with ownership limitations before initiating service. Carriers that divest cellular interests in order to comply with the new PCS rules should also qualify for Section 1071 tax certificates. In addition, to promote flexibility, innovation, and efficiency in the deployment of PCS, the Commission should allow parties to subdivide licenses on a geographic and/or spectrum basis.

The petitioners also highlight four other areas warranting comment. First, numerous parties document that the Commission should increase the maximum

authorized power for PCS base stations, in order to allow more efficient and cost-effective deployment. Second, the Commission should not attempt to define PCS equipment requirements and instead, rely on industry standards bodies. Third, the Commission should ensure that any clarification of the unlicensed PCS rules does not limit the provision of systems and devices by radio common carriers or their affiliates when offered consistent with the spectrum etiquette and associated Part 15 rules. Finally, the Commission should specify PCS service areas on the basis of counties rather than on Rand McNally's proprietary MTA and BTA maps and definitions.

DEC 30 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

POCKET FILE COPY ORIGINAL

Amendment of the Commission's Rules To Establish New Personal Communications Services

GEN Docket No. 90-314

GTE Service Corporation (“GTE”), pursuant to Section 1.429 of the Commission’s Rules,¹ respectfully submits these Comments regarding certain Petitions for Reconsideration of the Second Report and Order in the above-captioned proceeding.² For the reasons discussed below and in GTE’s own Petition,³ the record overwhelmingly supports eliminating unnecessary constraints on cellular participation in the PCS marketplace. In addition, the Commission should clarify that compliance with any eligibility limitations can occur prior to initiation of PCS service and that any necessary divestitures of cellular interests qualify for Section 1071 tax certificates.

As also detailed below, the petitions of other interested parties highlight several other areas where modifications or clarifications of the PCS rules are warranted. First, the Commission should allow PCS bidders to subdivide their authorization on a geographic or spectrum basis. Second, PCS licensees should be authorized to operate at higher power levels than specified in the Report and Order. Third, the Commission should not attempt to define equipment standards, but rather should rely upon the

1 47 C.F.R. § 1.429 (1992).

² Public notice of these Petitions appeared at 58 Fed. Reg. 65595 (Dec. 15, 1993).

³ GTE Petition for Limited Reconsideration and Clarification, GEN Docket No. 90-314, filed December 8, 1993 ("GTE Petition").

industry standard bodies. Fourth, the Commission should ensure that radio common carriers and their affiliates may provide unlicensed systems and devices consistent with the Spectrum Etiquette and Part 15 Rules. Finally, PCS service areas should be based upon county boundaries rather than proprietary Rand McNally MTA and BTA markets.

I. THE RECORD SUPPORTS ELIMINATING UNNECESSARY AND UNJUSTIFIED CONSTRAINTS ON CELLULAR PARTICIPATION IN PCS.

A. The Petitions Overwhelmingly Demonstrate that the Eligibility Rule Is Unnecessarily Restrictive and Bars Publicly Beneficial Cellular Participation in PCS.

All told, twenty-five parties urged the Commission to modify or eliminate the cellular eligibility rule.⁴ These submissions categorically confirm that a fundamental reconsideration of the eligibility restriction is warranted. As several parties explained, the competitive market structure for PCS assures against anticompetitive behavior by cellular companies,⁵ and the threat of such behavior is "undocumented and unrealistic."⁶ There will be at least three, and as many as seven, PCS licensees in

⁴ See Petitions of Alliance of Rural Area Telephone and Cellular Service Providers ("Alliance"); Anchorage Telephone Utility ("ATU"); Bell Atlantic Personal Communications, Inc. ("Bell Atlantic"); Cellular Telecommunications Industry Association ("CTIA"); Chickasaw Telephone Company et al. ("Chickasaw"); Columbia Cellular Corporation; Comcast Corporation; Concord Telephone Company; Florida Cellular RSA Limited Partnership; Iowa Network Services, Inc.; McCaw; National Telephone Cooperative Association ("NTCA"); NYNEX; OPASTCO; Pacific Telecom Cellular, Inc.; Personal Networks Services Corp.; PMN, Inc.; Point Communications Company; Radiofone, Inc.; Rural Cellular Association; Sprint Corporation; Telephone & Data Systems, Inc. ("TDS"); U.S. Intelco Networks, Inc.; and U S West.

⁵ See Petitions of CTIA at Appendix A; McCaw at 2-3; Radiofone at 9.

⁶ McCaw Petition at 3; see also Radiofone at 5-6 (PCS will not compete with cellular, so there is no opportunity or incentive for anticompetitive conduct), 10 (there is no incentive to warehouse spectrum in a competitive marketplace, and the construction deadlines ensure against warehousing in any event).

each service area,⁷ and in most cases, the MTAs and BTAs will be far larger than cellular MSAs and RSAs.

Moreover, many potential PCS entrants, including companies like MCI, consortiums of cable companies, and ESMRs, will have both substantial available resources and their own unique advantages — yet none of these companies is restricted from bidding in any way.⁸ The only effect of the eligibility restriction is to sharply limit the ability of cellular carriers to apply their expertise to PCS, both in-region and nationally, thereby excluding from the bidding process entities that may place the greatest value on the spectrum.⁹ Consequently, the Commission should seriously consider treating cellular carriers no different from any other PCS applicants.¹⁰

Such reconsideration is particularly appropriate because cellular carriers — particularly those affiliated with independent telephone companies — stand ready to contribute their “expertise, economies of scope ... and existing infrastructures”¹¹ to the early deployment of PCS. Indeed, the limitation falls most harshly on independent telephone companies, which received minority interests in cellular markets pursuant to FCC-encouraged settlements and cannot conceivably impede PCS competition. In contrast to most RBOCs, interexchange carriers and cable companies, independent telephone companies are particularly hard-hit by eligibility rules that ignore the absence of meaningful control over cellular systems in a PCS market.¹²

⁷ Petitions of McCaw at 2-3; Radiofone at 9.

⁸ McCaw Petition at 3.

⁹ *Id.* at 4.

¹⁰ *See* Petitions of Bell Atlantic at 13-17; Comcast at 5-6, 10-11 (for nonwireline carriers); McCaw at 2-4; Radiofone at 3-16; TDS at 5-6.

¹¹ Second Report and Order at ¶ 104.

¹² *See* Petitions of GTE at 3-5; PMN at 6-7; OPASTCO at 3-8; NTCA at 10-11; Sprint at 4.

Against this background — and assuming that any eligibility rule is needed at all — the effective POP test recommended by GTE,¹³ and similar improvements suggested by other petitioners,¹⁴ better serve the Commission's PCS licensing goals than rote application of the rigid and arbitrary attributable interest thresholds in the current rules. At a minimum, then, the Commission should tailor the eligibility restriction to allow greater participation in PCS (at the local, regional, and national levels) by entities that have no ability to control cellular licensees in a PCS market.

**B. MCI's Request for Its Own Self-Serving Spectrum Set Aside
Should Be Summarily Rejected.**

As the nation's second largest interexchange carrier, MCI has assembled a huge bidding consortium to pursue PCS opportunities. Not content with these efforts, MCI recently entered into an agreement with one of the world's largest telecommunications companies — British Telecom — that will ensure a massive infusion of foreign capital into its coffers. Despite the substantial resources at its disposal, MCI now asks the Commission to set aside one 30 MHz spectrum block for "non-cellular bidders" such as

¹³ See also Petitions of BellSouth at 15-17; Sprint at 5-7, 11-12; compare Comcast at 14 (urging use of a multiplier).

¹⁴ For example, various petitioners recommended excluding holders of limited partnership interests (see, e.g., Petitions of PMN at 4-5; Chickasaw at 4-6), restricting only parties that exercise actual control over an overlapping cellular system (see, e.g., Petitions of Bell Atlantic at 18-22; Chickasaw at 4-6, 11-2; Columbia Cellular at 6-8; NYNEX at 13-15; Pacific Telecom Cellular at 2-3; Sprint at 7-12), increasing the overlap required to trigger the restriction (see, e.g., Petitions of Alliance at 7-9 (20 percent); CTIA (4 percent); Florida Cellular (20 percent); Personal Network Services Corp. (20-30 percent), raising the ownership cut-off (see, e.g., Petitions of Bell Atlantic at 18-22 (should look at actual control or raise threshold to 25 percent at a minimum); CTIA (raise threshold to 30-35 percent)), and excluding rural cellular operators (see petitions of ATU at 1-4; Chickasaw at 7-9; Concord at 2; Iowa Network Services at 11-14; NTCA at 10-11; OPASTCO at 3-8; Rural Cellular Association at 3-6; TDS at 4-9 (if retain the restriction at all); U.S. Intelco Networks at 8-9).

itself. According to MCI, the nine largest cellular carriers must be barred from bidding on this specifically reserved PCS allocation.¹⁵

Obviously, creating a special form of designated entity status for MCI would yield no public interest benefits. There is not a single reason why MCI should be insulated from marketplace competition in the bidding process. Nor is there any basis for skewing the auctions to the disadvantage of eligible and fully qualified cellular carriers.

As a participant in a telecommunications market typified by just three major national competitors, MCI has recently and repeatedly touted the competitiveness of its industry. Remarkably, MCI now insists that the wireless marketplace is not competitive because there are just nine dominant cellular carriers nationwide and "duopoly pricing at the local levels."¹⁶ Nowhere does MCI attempt to reconcile its blatantly inconsistent and wholly self-serving characterization of telecommunications markets.

Nor does MCI offer any support for its assertion that the cellular marketplace is not competitive, and none is available.¹⁷ The cellular marketplace is vigorously competitive, with carriers competing in each market on the basis of price, coverage, ancillary features, and service quality. Rates vary considerably both within most markets and between markets. Even in markets where rates are similar, the Commission has correctly observed that such pricing is fully consistent with robust

¹⁵ MCI Petition at 4. See also GCI Petition at 8 (seeking to bar any cellular carrier that covers more than five percent of the nation's population).

¹⁶ MCI Petition at 2-3; see also GCI Petition at 7 (arguing that the cellular market is not truly competitive).

¹⁷ MCI's sole effort to justify this claim is several conclusory statements in its attached report by Dan Kelly. These statements cannot be reconciled with the realities of the marketplace.

competition.¹⁸ Moreover, with the advent of ESMRs and PCS, up to seven to nine new competitors will be aggressively pursuing wireless opportunities in local, regional, and national markets.

Undaunted by the true facts, MCI contends that the largest cellular companies likely would not use PCS licenses to offer services that compete with cellular.¹⁹ This assertion is patently absurd. No cellular carrier would bid millions or billions of dollars simply to warehouse spectrum. Moreover, the PCS construction and performance rules, explicitly prevent such conduct in any event.

MCI would eliminate a class of highly qualified bidders on the basis of sheer sophistry and in complete disregard of the Commission's explicit conclusion that broad participation by cellular carriers in PCS would yield substantial public interest benefits.²⁰ If the marketplace supports use of PCS for cellular-like service,²¹ then cellular carriers holding PCS licenses will do so in order to expand the geographic coverage of their own offerings and remain competitive. This is particularly true if MCI is correct that the wireless market has "national characteristics."²²

MCI also argues that cellular carriers received a "free" set-aside of cellular spectrum and have been exempted from auctions for license renewals, "creating a competitive inequity vis-a-vis PCS entrants."²³ Far from receiving spectrum for free,

¹⁸ See Petitions for Rulemaking Concerning Proposed Changes to the Commission's Cellular Resale Policies, 6 FCC Rcd 1719, 1725 (1991) ("a similarity in prices for cellular service, without more, may equally indicate vigorous price competition between facilities-based carriers in the same market.").

¹⁹ MCI at 3; see also GCI at 6, 7.

²⁰ Second Report and Order at ¶ 104.

²¹ As Radiofone explains, PCS may well be a complement to, rather than a substitute for, cellular service no matter who the licensee is. Radiofone Petition at 5-6.

²² MCI Petition at 4.

²³ Id. at 3-4.

however, many cellular carriers had to go through expensive comparative hearings and secondary market acquisitions in order to obtain their cellular properties.²⁴ In addition, cellular carriers had to develop and deploy brand-new technology and grow a wireless market from ground zero — in effect, laying the technological and economic foundation for new PCS entrants. Cellular carriers also will incur substantial costs in converting to digital technology and reconfiguring their networks to accommodate PCS, costs that new PCS entrants will not need to incur. And of course, MCI's complaint that cellular renewals will not be subject to the auction process is baseless, since PCS renewals likewise will be exempt from competitive bidding.

MCI goes on to assert that cellular carriers have a lower "hurdle rate" than new PCS entrants, because they supposedly enjoy a lower cost of capital and risk assessment. As a result, MCI claims that "without any eligibility restrictions, the nine largest cellular providers will end up with all of the PCS spectrum."²⁵ This argument is particularly ironic, coming from a company that, as noted earlier, is flush with four billion dollars in cash from British Telecom. MCI also ignores the considerable financial resources of other prospective PCS entrants, including the nation's largest cable companies and ESMRs.

Finally, MCI states — once again without support — that cellular carriers may tacitly collude in bidding for the 30 MHz licenses in order to eliminate new competition.²⁶ The prospect of nine fully independent rivals engaging in such conduct defies belief. Indeed, MCI's argument is particularly inapt given its own efforts to put together a nationwide PCS consortium, as well as recent announcements by major

²⁴ MCI should be fully aware of these costs, given its past participation in the cellular licensing process which resulted in substantial cellular interests MCI sold for profit to McCaw.

²⁵ Id. at 5.

²⁶ Id.; see also GCI at 6.

cable companies that they will team in seeking PCS licenses. In truth, MCI only seeks to eliminate potential competitors in the bidding process and the future wireless marketplace. Its proposal to burden cellular carriers with additional unwarranted restrictions is directly contrary to the public interest and should be summarily rejected.

C. The Commission Should Clarify That Compliance With Eligibility Limitations Must Occur Prior to Initiation of PCS Service and That Tax Certificates Will Be Issued For Any Necessary Divestitures of Cellular Interests.

In the event the Commission retains the cellular eligibility restriction in whole or in part, GTE's Petition recommended two clarifications to the PCS rules:

First, GTE urged that cellular carriers be permitted to bid for PCS licenses, subject to coming into compliance with ownership limitations prior to initiating PCS service. GTE explained that such a rule would permit orderly disposition of properties, avoid "fire sales," and be fully consistent with the Commission's cellular and mass media precedents.²⁷ The record strongly supports GTE's request. As Comcast explained, for example, the Commission must allow PCS applicants "a reasonable time to conform their business arrangements to regulatory mandates if it intends to create an efficient, innovative and competitive PCS marketplace."²⁸

Second, GTE sought clarification that carriers that divest cellular interests to comply with the new PCS rules — whether before or after bidding — will be eligible for tax certificates. GTE pointed out that there was a "demonstrable causal link" between the new PCS licensing policies and the divestiture of cellular interest. In addition, the divestitures are "necessary and desirable to effectuate" those policies. Accordingly, the

²⁷ GTE Petition at 5-7.

²⁸ Comcast Petition at 13; see also McCaw Petition at 5-6.

issuance of tax certificates would be consistent with past Commission applications of Section 1071.²⁹

II. THE COMMISSION SHOULD ALLOW PCS LICENSEES TO SUB-DIVIDE SPECTRUM ON A GEOGRAPHIC AND BANDWIDTH BASIS.

Several petitioners ask the Commission to allow licensees to subdivide PCS spectrum on a geographic and bandwidth basis.³⁰ As these parties explain, this flexibility would expedite the introduction of new services, promote participation in PCS by additional entities, and create incentives for the development of innovative niche offerings.

The Alliance of Rural Area Telephone and Cellular Service Providers, for example, urged the Commission to:

recognize the benefit of, and provide in its rules for, post-auction partitioning of the MTAs and BTAs into separate PCS license areas.

The principal benefit of partitioning is that companies who are committed to providing PCS in rural areas may do so without need to also attempt to purchase license rights to serve the urban areas which dominate the MTAs and BTAs. This will promote an expeditious offering of new

²⁹ GTE Petition at 8-11; see also Comcast Petition at 16-18 (favoring tax certificates for nonwireline cellular carriers, but not addressing their use for wireline cellular carriers).

³⁰ See Petitions of Alliance at 2-3; BellSouth at 20-22; CTIA at 12 (urging that cellular providers be permitted to obtain up to 15 MHz in-region); McCaw at 7-8; NTCA at 1-8; Rural Cellular Association at 7-8; Time Warner Telecommunications at 10-11 (licensees in the lower bands should be permitted to lease, enter into joint ventures or consortia, or otherwise utilize portions of spectrum licensed to others in the same band, if the Commission does not adopt 40 MHz allocations on reconsideration). In addition, PCS Action suggests that designated entities be permitted to split their 20 MHz allocations in half and sublicense the separate 10 MHz portions to 30 MHz licensees. PCS Action Petition at 2-12. Although this approach might be characterized as subdivision of authorizations, it is flatly inconsistent with the purposes of the designated entity allocation and plainly contrary to the public interest. (Of course, designated entities should be free to subdivide spectrum with other designated entities.)

telecommunications services to the public in metropolitan and rural areas alike.³¹

Similarly, McCaw noted that permitting subdivision of PCS authority would give licensees flexibility "to adapt PCS offerings to the developing marketplace in a manner that promotes the underlying purposes of the PCS ownership and licensing rules."³² McCaw gave specific examples of areas where geographic subdivision might make particular sense, and explained that "subdivision on a frequency basis would allow service providers to utilize spectrum in the manner that most rationally satisfies marketplace demand, rather than being forced to use all of a 10, 20, or 30 MHz allocation." This flexibility would allow PCS "to adapt to new technological developments and to serve niche markets."³³ Clearly, the geographic and spectrum subdivision advocated by those petitioners has significant merit.³⁴

³¹ Alliance Petition at 2. Several independent telephone companies echoed the point that geographic subdivision could expedite the delivery of PCS to rural areas. See, e.g., Petitions of U.S. Intelco Networks at 7-8; NTCA at 1-8; Rural Cellular Association at 7-8.

³² McCaw Petition at 7.

³³ Id. at 7-8. See also Bell South Petition at 18 ("[t]he marketplace should ultimately determine spectrum assignments and service areas.")

³⁴ Such subdivision becomes particularly important if the Commission unwisely retains the cellular eligibility restriction in its current form or adopts national combinatorial bidding procedures. In such cases, cellular carriers must be permitted to obtain PCS licenses in portions of a BTA, MTA, or nationwide authorization where they do not provide cellular service, and to obtain up to 15 MHz of additional spectrum where they do, consistent with the 40 MHz overall cap. See McCaw Petition at 8; CTIA Petition at 12. This modification would avoid any risk of competitive harm while ameliorating the inequities flowing from the eligibility limitation.

III. THE COMMISSION SHOULD ALLOW INCREASED POWER FOR PCS BASE STATIONS.

Eleven petitioners ask the Commission to increase the allowable power limits for PCS base stations.³⁵ As these parties point out, a significant increase in the maximum authorized power would yield several advantages, without appreciably increasing risks of interference or creating environmental health hazards.

GTE agrees that increased power is necessary to allow PCS providers efficiently to cover rural areas and meet the Commission's aggressive build-out schedule.³⁶ The record also shows that higher power operations would allow PCS providers to use innovative high gain, intelligent antennas that allow far more efficient deployment of base stations and enhance service reliability.³⁷ Moreover, a higher power level is necessary to enable 2 GHz PCS operations to overcome limitations of the higher band.³⁸ Consequently, GTE encourages the Commission to reconsider the current

³⁵ See Petitions of American Personal Communications ("APC") at 3-8 (1000 watts); Ameritech at 1-2 (1000 watts); MCI at 7-8 (1600 watts); Motorola at 7-8 (1000 watts); Northern Telecom at 6-17 (1000 watts); Pacific Bell and Nevada Bell at 3-4 (1900 watts); Pacific Telesis at 1-7 (1500 watts); Sprint at 14-15 (1600 watts); Telocator at 2-7 (1000 watts); Time Warner Telecommunications at 13 (unspecified); U S West at 2-16 (1000 watts).

³⁶ See, e.g., Petitions of MCI at 7-8; Northern Telecom at 4; Telocator at 3; U S West at 11-12.

³⁷ See, e.g., Petitions of Northern Telecom at 14-17; Sprint at 14-15; U S West at 12-13 (explaining that "[t]he 100-watt power limit will ... discourage manufacturers from developing improved antenna technology which would increase coverage and range of service (without a concomitant increase in handset output power and, possibly, with a decrease in handset power).").

³⁸ See, e.g., Northern Telecom Petition at 4 n.3 ("Because of the different propagation characteristics of radio waves in the 2 GHz band where PCS is located, as compared to the lower bands where cellular, specialized mobile radio and other wireless services operate, higher power is necessary in the 2 GHz band to provide comparable coverage."); U S West Petition at 8-9 ("by virtue of the differences in propagation characteristics, imposing on PCS licensees the same power limits that are imposed on cellular licensees would place PCS licensees at a distinct cost

100-watt limit on PCS base stations and authorize a higher level that permits more efficient and cost-effective operations.

IV. THE COMMISSION SHOULD NOT ATTEMPT TO DEFINE PCS EQUIPMENT REQUIREMENTS, BUT RATHER SHOULD RELY UPON INDUSTRY STANDARDS BODIES.

The Commission has prudently decided not to prescribe PCS equipment standards. Rather, it has chosen to "encourage the efforts" of industry standards groups and closely monitor their activities, in order "to ensure that consumers and all PCS providers benefit from interoperability and seamless roaming capabilities of PCS systems."³⁹ GTE applauds this approach. There are a multitude of competing technologies being considered by service providers, including TDMA, CDMA, GSM, and others, and any PCS standards must allow flexibility to employ any or all of these on a timely basis.

The Mobile and Personal Communications Division of the Telecommunications Industry Association ("TIA/MPCD") has asked the Commission to increase its involvement in the standards process by "requiring that all equipment type-accepted for licensed PCS operation in the 1.8-2.2 GHz band meet standards developed by an ANSI accredited standards body."⁴⁰ According to TIA/MPCD, interim standards should be published by the end of 1994.⁴¹

GTE shares TIA/MPCD's recognition that prompt development of industry standards will be necessary to allow roaming. At the same time, however, GTE believes that TIA/MPCD's proposed solution is too open-ended, raises the potential for

disadvantage *vis-a-vis* cellular licensees because of the need to construct, maintain and operate many more cell sites.").

³⁹ Second Report and Order at ¶ 138.

⁴⁰ TIA/MPCD Petition at 3.

⁴¹ Id. at 4.

delays in implementing service, and therefore could be counter-productive. There is simply no guarantee that the standards referenced by TIA/MPCD will be available in time to accommodate the early introduction of PCS service, or that they will be consistent with the desire of service providers to pursue a variety of technologies.

V. ANY CLARIFICATION OF THE UNLICENSED PCS RULES SHOULD ENSURE THAT CELLULAR CARRIERS AND THEIR AFFILIATES ARE FREE TO PARTICIPATE FULLY IN THE OFFERING OF SYSTEMS AND DEVICES CONSISTENT WITH THE SPECTRUM ETIQUETTE AND OTHER PART 15 REQUIREMENTS.

In the Second Report and Order, the Commission allocated 40 MHz of spectrum for unlicensed PCS. This allocation is intended for use by low power systems and devices operating consistent with a Spectrum Etiquette. Licensed systems are obviously not contemplated in the unlicensed PCS band.

AT&T now seeks clarification that the unlicensed PCS spectrum is not available for radio common carrier services.⁴² If any such clarification is deemed necessary, GTE urges the Commission to take great care to avoid suggesting that radio common carriers or their affiliates face any special limitations on their participation in the provision of systems and devices where consistent with the Spectrum Etiquette and other part 15 requirements. Indeed, given AT&T's impending radio common carrier status, GTE assumes that such an outcome is not being sought or implied by the petition for reconsideration.

VI. THE COMMISSION SHOULD IDENTIFY PCS SERVICE AREAS BASED ON THE COUNTIES WITHIN EACH BTA AND MTA, INSTEAD OF USING THE PROPRIETARY RAND MCNALLY DEFINITIONS AND MAPS.

GTE shares the concerns expressed by Telocator and Killen Associates over basing the PCS licensing scheme on Rand McNally's proprietary definitions and

⁴² AT&T Petition at 6.

maps.⁴³ Killen, for example, cautions that "use of the Rand McNally structure will restrict the bidding process, lessen competition, increase auction costs and likely reduce the anticipated auction revenue to the Federal Government."⁴⁴ These problems could be avoided if the Commission incorporated in the PCS rules or in a separate Public Notice a list of which counties are included within each BTA, and which BTAs are included within each MTA.⁴⁵

As Telocator notes, identifying the PCS service areas generically through the rules or a Public Notice would allow widespread access to this information at little or no cost, removing potential obstacles to bidding by smaller applicants. This approach also would track the Commission's decision to create new MTAs for Alaska and several U.S. territories, protect against the possibility that the 1992 atlas (upon which the Commission's rules are based) would go out of print or that Rand McNally would modify the MTA and BTA boundaries, facilitate adoption of similar licensing areas for other services, and cure any copyright or trademark-related concerns, no matter how remote.⁴⁶

⁴³ See Petitions of Telocator, the Personal Communications Industry Association ("Telocator") at 16-18; Killen Associates at 1-2.

⁴⁴ Killen Petition at 1 (further noting that Rand McNally charges 395 dollars for its atlas, 1000 dollars for a disk and single user license fee, and 12,000 dollars and five percent of net sales for a reseller license for attorneys, engineers, and consultants seeking to use its data base).

⁴⁵ Telocator attaches such a list at Appendix C to its Petition.

⁴⁶ Rand McNally's recent filing in this docket does not ameliorate such concerns. Although it states that there will be no charge to the FCC or for private, internal use of the listings, it cautions that a license will be required for "reproduction or resale." As Killen notes, this raises the possibility that Rand McNally would seek a license if an auction winner simply wished to advertise that it had obtained a particular MTA or BTA. See Killen Petition at 2.

VII. CONCLUSION


The record in this proceeding demonstrates the need to eliminate unwarranted restrictions on the ability of cellular carriers to participate in PCS. To that end, GTE urges the Commission to seriously consider rescinding the cellular eligibility restriction in its entirety, so that cellular carriers are free to obtain PCS licenses up to the 40 MHz overall spectrum cap applicable to all licensees. At a minimum, the Commission should adopt the effective POP test as a means of determining cellular eligibility to bid for MTA licenses (or to take part in national or regional consortia); clarify that cellular carriers may bid for PCS licenses, subject to coming into compliance with any ownership limitations prior to initiating PCS service; and, state that cellular carriers that divest interests in order to comply with the new PCS rules and policies will be eligible for tax certificates.

As demonstrated by other petitioners, the PCS rules also should be clarified to allow parties to subdivide PCS authorizations on a geographic and spectrum basis. In addition, the Commission should increase authorized power levels for PCS base stations; allow industry bodies to develop PCS standards in a manner that does not threaten the timely initiation of PCS service or improperly restrict service providers' technological choices; and, ensure that any clarification of the unlicensed PCS rules does not limit the provision of systems and devices by radio common carriers or their affiliates when offered consistent with the Spectrum Etiquette and Part 15 rules.

Finally, the Commission should generically identify PCS service areas based on the counties within each BTA and MTA, rather than relying on Rand McNally's proprietary maps and definitions.

Respectfully submitted,

GTE SERVICE CORPORATION

By: 
Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5214

December 30, 1993

Its Attorney

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Comments" have been mailed by first class United States mail, postage prepaid, on the 30th day of December, 1993 to all parties of record.


Ann D. Berkowitz